

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Rilwan Olasunkanmi Alowonle,

Plaintiff,

v.

Department of Corrections -
MCF/WRML Corrections Worker
Food Solutions (CWF), Joan
Fabian, Dan Hilleren, Becky
Dooley, Jim Benson, Sandy O'Hara,
Julie Nummela, Patrick Alan
Stevens, Michelle Hendrickson,
Tammy Ward, Claudia Hahn, Becky
Pemberton, Sergeant Jerry
Spiess, Sergeant K. Oquist, and
Lieutenant Haglund,

Defendants.

**MEMORANDUM OPINION
AND ORDER**

Civil No. 09-1898 ADM/AJB

Rilwan Olasunkanmi Alowonle, pro se.

I. INTRODUCTION

This matter is before the undersigned United States District Judge for a ruling on Plaintiff Rilwan Olasunkanmi Alowonle's ("Plaintiff") Objections [Docket No. 8] to Magistrate Judge Arthur J. Boylan's October 8, 2009 Report & Recommendation ("R&R") [Docket No. 7]. Judge Boylan recommended denying Plaintiff's Application to Proceed Without Prepayment of Fees [Docket No. 2] and Plaintiff's Motion for Appointment of Counsel [Docket No. 3]. For the reasons stated below, the Court declines to adopt the R&R at this time. However, the case will be dismissed, as recommended by the R&R, if Plaintiff does not promptly pay the initial partial filing fee prescribed by 28 U.S.C. § 1915(b)(1).

II. BACKGROUND

Plaintiff is a prisoner at the Minnesota Correctional Facility in Moose Lake, Minnesota. He is seeking relief under 42 U.S.C. § 1983 [Docket No. 1]. Plaintiff did not tender the \$350.00 filing fee required for this action when he submitted his complaint but instead submitted an application for leave to proceed in forma pauperis (“IFP”).

Prisoner IFP applicants, such as Plaintiff in this case, are required to pay an initial partial filing fee pursuant to 28 U.S.C. § 1915(b)(1). Based on the information provided in Plaintiff’s IFP application, Judge Boylan determined that Plaintiff should be required to pay an initial partial filing fee, under the formula prescribed at § 1915(b)(1), in the amount of \$39.65. By Order dated August 3, 2009 [Docket No. 7], Plaintiff was instructed to pay his initial partial filing fee within twenty days. The Order expressly advised Plaintiff that if he did not pay the prescribed amount by the deadline, he would be deemed to have abandoned the action and it would be recommended that the case be summarily dismissed for lack of prosecution.

After Plaintiff received Judge Boylan’s Order instructing him to pay his initial partial filing fee, Plaintiff requested an extension of the deadline for satisfying his filing fee obligation [Docket No. 5]. By Order dated August 24, 2009 [Docket No. 6], Judge Boylan granted an extension of the fee payment deadline and directed Plaintiff to pay his initial partial filing fee no later than September 22, 2009. Judge Boylan warned Plaintiff that his action would be subject to dismissal if he did not pay his initial partial filing fee within the allotted time.

Plaintiff did not pay his initial partial filing fee by the deadline set by Judge Boylan’s Order and offered no explanation for his failure to submit payment. Therefore, in accordance with the warnings in his prior Order, Judge Boylan filed an R&R recommending that the action

be summarily dismissed without prejudice.

Plaintiff objects to the R&R and states he did not receive Judge Boylan's August 24, 2009 Order and, therefore, was not aware of the extension of the fee payment deadline. The Court will grant Plaintiff a final opportunity to pay his initial partial filing fee. If Plaintiff pays \$39.65 by December 15, 2009, the matter will be referred to Judge Boylan for further proceedings. However, if the initial partial filing fee is not paid in full by December 15, 2009, the Court will adopt the R&R, and dismiss this case without prejudice.

III. CONCLUSION

Based upon the foregoing, and all of the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that Plaintiff shall pay an initial partial filing fee of not less than \$39.65 by December 15, 2009, or his case shall be summarily dismissed without prejudice.

BY THE COURT:

s/Ann D. Montgomery
ANN D. MONTGOMERY
U.S. DISTRICT JUDGE

Dated: November 25, 2009.